

**GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Determination on PREPA's
Urgent Request to Increase Budget for
Security Contracts.

RESOLUTION AND ORDER

I. Procedural Background

On May 16, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") filed a document titled, *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026* ("May 16 Motion"), through which, LUMA submitted to the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") the proposed T&D Budgets developed by LUMA, the proposed GenCo Budgets developed by GENERA PR, LLC ("Genera"), and the proposed HydroCo and HoldCo Budgets developed by the Puerto Rico Electric Power Authority ("PREPA"). LUMA requested that the Energy Bureau review and approve the Consolidated System Annual Budgets for FY2024, including the T&D Operating and Capital Budgets, the GenCo Budget, the allocation of the HydroCo Budget and HoldCo Budget, and other expenditures in the May 16 Motion.

On June 25, 2023, the Energy Bureau issued a Resolution and Order ("June 25 Resolution"), through which it modified the proposed FY 2024 Budgets and approved the FY 2024 Budgets as modified, subject to compliance with orders and reporting requirements.

On June 30, 2023, LUMA filed a document titled, *Submission of Motions for Reconsideration by PREPA and Genera and Notice of Intent to Request Reconsideration of Resolution and Order of June 25, 2023* ("June 30 Motion"), through which, LUMA submitted motions for reconsideration of the June 25 Resolution on behalf of PREPA ("PREPA Reconsideration Motion")¹ and Genera ("Genera Reconsideration Motion")² and provided notice of its intention to request reconsideration on its own behalf. LUMA specified that it had no part in the development of the PREPA Reconsideration Motion or the Genera Reconsideration Motion, made no representation as to their appropriateness and reserved its rights to file its own position under separate cover.

On July 7, 2023, PREPA filed a document titled, *Second Motion to Submit PREPA's Contracts for Professional and Technical Services in Compliance with Portion of the June 25 Order and Urgent Request for Approval* ("July 7 Motion"), through which, PREPA submitted a list of 24 contracts that PREPA asserted were executed before submittal to the Energy Bureau for approval, due to error or inadvertence by PREPA.

On July 19, 2023 ("July 19 Resolution"), August 3, 2023 ("August 3 Resolution") and August 14, 2023 ("August 14 Resolution"), the Energy Bureau issued Resolutions and Orders through which it ordered PREPA to submit in all future filings, a table reflecting the approved and proposed contracts, the amounts approved and proposed for those contracts, the line items from the category to which they correspond and the remaining balance for that category.

¹ See, *In re: Review of LUMA's Initial Budget*, Case No.: NEPR-MI-2021-0004, *Motion for Reconsideration of the June 24 resolution and Order on the Determination of the FY24 Annual Budgets for the Electric Utility System* Luma, Genera and PREPA, filed by PREPA on June 30, 2023, Exhibit 2.

² *Id.*, Exhibit 3..



On July 28, 2023, PREPA filed a document titled, *Informative Motion and Request for Remedy* ("July 28 Informative Motion"), through which, PREPA explained that the FY 2024 Budget approved by the Energy Bureau would leave PREPA unable to operate efficiently and manage its day-to-day activities. PREPA related that its Governing Board approved Resolution 5076 granting authorization to use funds deposited into the FEMA reimbursement account to cover budgetary gaps. PREPA included a revised budget and a list of contracts it considered necessary to enable it to operate and meet all its obligations. PREPA requested that the Energy Bureau approve the amended budget and authorize the use of funds from the FEMA Reimbursement Account.

On August 16, 2023, the Energy Bureau issued a Resolution and Order ("August 16 Order"), through which, it required that PREPA file a table including the totality of the approved and proposed contracts for FY 2024, the amounts proposed and approved for those contracts, the line items from the category to which they correspond, and the remaining balance for that category and reminded PREPA that all executed contracts that were not approved by the Energy Bureau nor included in the referenced table must be terminated and that no services about those contracts could be rendered.³

On September 1, 2023, PREPA filed a document titled, *PREPA's Motion for Reconsideration of Portions of the August 16 Order and in Compliance with the August 14 Request for Information and the August 16 Order* ("September 1 Motion"), through which, PREPA reiterated its request for funds it asserted were necessary to minimally comply with its responsibilities, including specific environmental obligations. PREPA requested that the August 16 Resolution be stayed and reconsidered regarding the requirement that contracts which were not approved were to be terminated.

On September 22, 2023, the Energy Bureau issued a Resolution and Order ("September 22 Resolution"), through which, it increased the HoldCo Operating Budget for \$3.673MM for certain specific uses, subject to reporting requirements. The Energy Bureau warned PREPA it must adhere to the approved budgets, and not resubmit without new supportive material, budgets which are essentially the same or similar to budgets that the Energy Bureau has reviewed and issued a determination.

On September 27, 2023, the Energy Bureau issued a Resolution and Order ("September 27 Order"), through which, it ordered PREPA to submit to the Energy Bureau for review and approval, any contracts for FY 2024 it had not resubmitted for review and which it intended to execute but were not yet submitted to the Energy Bureau.

On November 7, 2023, PREPA filed a document titled, *Motion in Compliance with Orders and Request for Approval of Revised Proposed Budget* ("November 7 Motion"), through which, PREPA submitted, "all existing contracts it has executed, plans to execute or plans to amend during FY24 that have not been previously approved by the Energy Bureau,"⁴ purportedly in compliance with the September 27 Resolution. PREPA requested the Energy Bureau approval of a proposed revised budget.

On January 25, 2024, PREPA filed a document titled, *Urgent Request to Increase Budget for Security Contracts to the Honorable Energy Bureau* ("January 25 Motion"), through which PREPA urgently requests an increase to the FY 2024 Budgets for security contracts with Genesis Security Services and its security system maintenance contract with Protective Security Systems. PREPA asserts that additional budget funding for HoldCo and HydroCo is necessary to cover these amended contracts through the remainder of the fiscal year, to provide adequate security for facilities, assets, and employees.

PREPA states it reduced security personnel and services to minimum levels and insufficient funding will expose it to liability risks, labor disputes, loss or damage of assets and other financial impacts far exceeding the cost savings from denying the funding. PREPA provided detailed documentation of the security contracts and services covered. Specifically, PREPA

³ August 16 Order, pp. 5-6.

⁴ November 7 Motion, p. 7.



requests an increase of \$404,000.00 to the Security line-item under the HoldCo Non-Labor Budget (for a total of \$1.201MM), and an increase of \$942,000.00 to the Security line-item of the HydroCo Non-Labor Budget (for a total of \$2.654MM).⁵ PREPA states this constitutes a reduction from previously requested levels, and that without this funding, no security will be available.⁶

On February 23, 2024, PREPA filed a document titled, *Motion Reiterating Urgent Request to Increase Budget for Security Contracts* ("February 23 Motion"), through which, PREPA stressed the urgency of its request for approval of an increase to the Security line-item of the HoldCo and HydroCo Non-Labor Budgets for \$404,000.00 and \$942,000.00 respectively, stating that without the additional funds, there would be no security measures in place as of March 1, 2024.

II. Analysis

The Energy Bureau has carefully examined the arguments and budget requests made in PREPA's January 25 Motion related to security contracts and systems, as it has in earlier similar requests.⁷

As the Energy Bureau stated previously,⁸ the number of facilities and assets under PREPA's direct responsibility has substantially decreased and without validated and proven information on security risks, its budget determinations will not be revised. PREPA has not comprehensively enumerated reductions in security needs to reflect its reduced responsibilities. The scale of security expenses PREPA seeks continues to be disconnected from this new reality.

The Energy Bureau's analysis during the FY 2024 Budget Approval process accounted for baseline needs to safeguard PREPA's remaining infrastructure and employees. PREPA has not adequately justified its assertion that its request for additional funds has been reduced to the bare minimum for each one of its facilities and sites.⁹

The Energy Bureau reiterates¹⁰ the importance of placing a proper level of emphasis on cost-effective perimeter barriers, surveillance system technology, and vigilance practices suited to PREPA's mandate to downsize, and the nature of the facilities and security needs being addressed.

The Energy Bureau acknowledges PREPA's explanation of how its RFP process resulted in its seeking additional funding for a bidder whose costs are more expensive than the bidder it initially selected,¹¹ and PREPA's assertions that the requested services are the bare minimum required to protect its employees and property.¹² Review of the services requested, however, leads the Energy Bureau to continue to question the appropriateness of PREPA's asserted level of reductions in security services.

PREPA's enumeration of some of the security services to be rendered ranges from life threatening events to illegal use of land and dumping.¹³ The level of risk inherent in these

⁵ January 25 Motion, p. 14.

⁶ January 25 Motion, p. 14.

⁷ See, June 25 Resolution and December 8 Resolution.

⁸ December 8 Resolution, p.7.

⁹ January 25 Motion, p. 13.

¹⁰ December 8 Resolution, p. 7.

¹¹ January 25 Motion, p. 3.

¹² January 25 Motion, p. 1.

¹³ January 25 Motion, p. 11.



services varies considerably, and PREPA should allocate existing and requested funding accordingly. For example, the risks to which PREPA refers at page 11 of the January 25 Motion enumerated at points 1 and 3, including trespass and illegal use of PREPA's land for personal use, do not appear to be urgent. With adequate perimeter warnings and precautions, trespassing can be reduced. Illegal invasion and occupation of PREPA's real property and land is not a matter that requires instantaneous action nor specialized security personnel to address, nor it will detrimentally affect the supply of electricity. PREPA appropriately differentiates these concerns from concerns relating to illegal dumping of toxic waste in PREPA's waterways, which should receive a higher level of priority. Other services for which the need for security is cited without adequate justification include, for example, additional security personnel in buildings which already have security and for meetings dealing with HoldCo matters for which the need for security has not been shown. In addition, PREPA should seek to shed its responsibility to provide security for any facilities that do not directly contribute to the provision of safe and reliable electric service.

PREPA seems to have severely mis-planned its security expenditures because of its level of approved funding and Energy Bureau admonitions¹⁴ that PREPA must operate within its approved budgets and should not expect the Energy Bureau to continue to grant additional funding to repeated requests. PREPA asserts that if no additional budget is authorized by the Energy Bureau for these contracts, particularly the amended Genesis Contracts, "PREPA will be forced to operate with no security measures in place."¹⁵ The assertion of this level of need, if accurate, reflects poor planning and failure to adjust to the approved budgets.

In the January 25 Motion, PREPA references the sharing of cost between Genera and itself for security services. PREPA states, "As part of the transition, it was agreed that, effective July 1, 2023, Genera would become responsible for 70% of the Genesis Contracts, while PREPA would remain responsible for the remaining 30%."¹⁶ PREPA subsequently states, "...However, facilities that were supposed to fall under Genera's responsibility, such as Bechara, Corozal, Guaynabo (COE), and certain parking lots, were reassigned to PREPA for it to cover 100% of its security services."¹⁷ The impact of this sharing on PREPA's request is not clear, for example, to what extent are the requested funds to cover 30% and to what extent are they to cover 100%? In addition, PREPA does not elucidate regarding who or what entity "...reassigned to PREPA..." responsibility to cover 100% of its security services for certain facilities, thereby, increasing PREPA's costs. From this arrangement, Genera considers the security services rendered at these installations not to be critical.

Requests devoid of analytical rigor or disconnected from new budgetary realities will not be considered. The analysis undertaken by the Energy Bureau during the FY 2024 Budget review process shows excessive and unnecessary expenditures on security across numerous areas. While robust security protections are needed for critical infrastructure, the current expenditures and scope of security expenses appear gratuitous and inconsistent with approved budgets. The Energy Bureau is deeply troubled that ratepayer monies are being expended on security where not fully justified. PREPA continues to disregard approved budgets and lacks controls on spending. PREPA's renewed urgent request in the February 23 Motion, for a major budget increase, shows its lack of appropriate fiscal management. The budgets were determined in June 2023.

Nonetheless, the Energy Bureau recognizes the need for continuity of essential security services. The Energy Bureau grants additional funding in the short-term to prevent the shutdowns PREPA describes. However, the Energy Bureau clarifies that PREPA's actions here reflect a deeper disregard for disciplined financial governance and must be remedied.

¹⁴ September 22 Resolution, p. 23.

¹⁵ January 25 Motion, p. 14.

¹⁶ January 25 Motion, p. 6.

¹⁷ January 25 Motion, p. 7.



The Energy Bureau authorizes a reallocation of \$350,000 from the HydroCo Maintenance Projects Expenses budget line to the HydroCo Non-Labor/Other Operating Expenses Security budget line to cover security contract needs only for HydroCo facilities that directly contribute to the supply of electricity. No increase is approved for the HoldCo Security budget line. While continuous security of infrastructure that contributes to the supply of electricity is important, the Energy Bureau remains concerned about potential overspending in functions that could be redundant or not needed. Tighter reins must be placed on scrutinizing all security expenses to ensure ratepayer monies are efficiently used.

The Energy Bureau expects PREPA to adjust according to the budgets approved in the June 25 Resolution, reduce any gratuitous security costs, and show stricter financial governance overall.

III. Conclusion

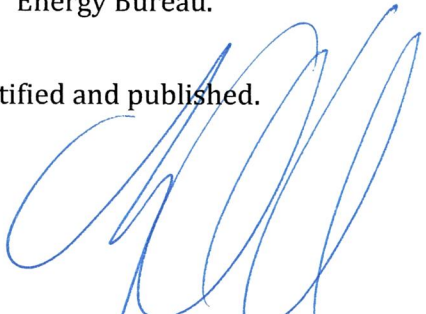
The Energy Bureau **PARTIALLY APPROVES**, through a reallocation of \$350,000 from the HydroCo Maintenance Projects Expenses budget line to the HydroCo Non-Labor/Other Operating Expenses Security budget line, PREPA's February 23 Motion requesting an increase to fiscal year 2024 Security budget lines for HoldCo and HydroCo. This reallocated funding, along with security cost reductions by PREPA under the discussion above, will cover security contract needs through the rest of the fiscal year.

The Energy Bureau **ORDERS** PREPA to file within ten (10) business days of notification of this Resolution and Order, a report specifically correlating its security budget expenditures to the 70%/30% cost allocation for security services between Genera and PREPA, and the reasoning and authority for any facilities' security costs borne 100% by PREPA.

The Energy Bureau **WARNS** PREPA that:

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and
- (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000) at the discretion of the Energy Bureau.

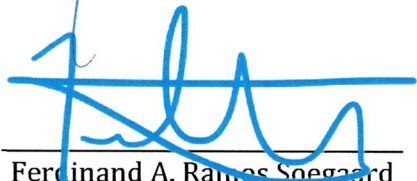
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Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner



CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau have agreed on March 1st, 2024. Associate Commissioner Antonio Torres Miranda did not intervene. I also certify that in March 1st, 2024 a copy of this Resolution and Order was notified by electronic mail to pre@promesa.gov; margarita.mercado@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; mvalle@gmlex.net; arivera@gmlex.net; legal@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today March 1st, 2024.



Sonia Seda Gaztambide
Clerk

